MEMORANDUM

TO Interested Parties
FROM Americans for Responsible Solutions
DATE June 12, 2017
RE Discussion Draft, Sportsmen's Heritage and Recreational Enhancement Act (SHARE) Act

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SUMMARY: The discussion draft of the Sportsmen's Heritage and Recreational Enhancement Act (SHARE Act), by Rep. Jeff Duncan (R-SC), would deregulate silencers by removing them from the scope of the National Firearms Act, meaning that they would no longer be subject to the Act's tax and registration requirements. The bill deregulates silencers further by treating them in the same manner as long guns rather than handguns. (Title XVII)

This bill would weaken the regulation of the interstate transportation of firearms by allowing interstate travelers to carry firearms outside of the trunk of a car in many situations where it is currently prohibited, and by imposing the threat of litigation against law enforcement officers who arrest or detain armed interstate travelers. (Title XII)

The bill would remove references to "sporting purposes" in many places within federal gun laws, replacing it with "lawful purposes." The result would be: (1) to dramatically increase the kinds of firearms and ammunition that may be imported into the U.S., (2) to remove certain highly dangerous shotguns and rifles from the scope of the National Firearms Act's tax and registration requirements, and (3) to allow firearms to be borrowed by a person outside his or her state of residence for non-sporting purposes. This bill would also legalize certain kinds of armor-piercing ammunition that may be used in a handgun based on the manufacturer or importer's subjective intent for it to be used in a rifle or shotgun. (Title XVIII)

DEREGULATING SILENCERS

Title XVII, entitled the "Hearing Protection Act," would deregulate silencers. Although the language is different, the effect would be very similar to the effect of H.R. 367, the Hearing Protection Act. The SHARE Act would go beyond H.R. 367 in several respects. More specifically:

- **Silencers No Longer under NFA:** The bill would remove silencers from the purview of the National Firearms Act, meaning that they would no longer be subject to the tax and registration requirements (like H.R. 367). (Section 1702(a))
- **Tax Credit:** The bill would provide for a tax credit for individuals who have paid the tax within the year of the bill's enactment. H.R. 367 would do this as well, but the SHARE Act language is more explicit. (Section 1702(c))
- **Silencers as Firearms:** The bill would cause silencers to generally be treated as firearms under the Gun Control Act of 1968 and the Brady Handgun Violence Prevention Act, meaning that a licensed dealer would be required to conduct a background check upon transfer, but unlicensed sellers and transferors would not (like H.R. 367). (Section 1703, see 18 U.S.C. § 921(a)(3))
- **Preemption of State and Local Silencer Laws:** The bill would preempt certain state and local laws regarding silencers. The language is a bit broader that H.R. 367 with

respect to the types of taxes silencers may be subject to. Neither H.R. 367 nor the SHARE Act would preempt state silencer bans, however. (Section 1704)

- **Destruction of Silencer Registry:** The bill would require the Attorney General to destroy all silencer registration records within a year after the bill's enactment. (Section 1705)
- **Further Deregulation of Silencers:** The bill would further deregulate silencers so that they are treated more like rifles or shotguns than handguns, by:
    - Allowing licensed dealers to sell or transfer silencers to people age 18 and over. Current law limits these sales and transfers to people age 21 and over. (Section 1706(2)(A))
    - Allowing licensed dealers to sell or transfer silencers across state lines. (Section 1706(2)(B))
- **Definition of Silencer:** The bill would narrow the definition of silencer, so that parts that are used primarily to mount a silencer onto a firearm would not fall within the definition, and no background check would be required upon transfer. (Note: the definition refers to a "keystone part"; this name may refer to a particular manufacturer.) (Section 1706(1))
- **Tax Silencers Like Handguns:** In place of the tax under the National Firearms Act, impose a 10% tax on sales of silencers by manufacturers, importers, and producers identical to that currently imposed on sales of handguns. (Section 1707)

Major law enforcement groups oppose the deregulation of silencers. These groups include: the Commission on Accreditation of Law Enforcement Agencies, Inc. (CALEA), the Hispanic American Police Command Officers Association (HAPCOA), the International Association of Campus Law Enforcement Administrators (IACLEA), the International Association of Chiefs of Police (IACP), the Major Cities Chiefs Association (MCCA), the National Association of Women Law Enforcement Executives (NAWLEE), the National Organization of Black Law Enforcement Executives (NOBLE), the Police Executive Research Forum (PERF), and the Police Foundation (PF), which together comprise the National Law Enforcement Partnership to Prevent Gun Violence.

WEAKENING REGULATION OF INTERSTATE FIREARM TRANSPORT

Title XII would weaken the regulation of the interstate transportation of firearms. This language is similar to the language of H.R. 358. Current law entitles a person who is eligible to possess firearms under federal law to transport an unloaded firearm for lawful purposes between two places where he or she is legally eligible to possess it, if the firearm and any ammunition are transported properly. More specifically, firearms and ammunition must be locked in the trunk. If the vehicle does not have a trunk, the firearm or ammunition may be locked in a container other than the glove compartment or console. The bill would loosen this law in several respects.

- **Guns Need Not Be in the Trunk or in a Container:** The bill would allow the firearm or ammunition to be accessible from the passenger compartment, even if the vehicle *does* have a trunk, if it is locked in a container or with a trigger lock or other locking device. The option of carrying the firearm locked with a trigger lock or other locking device does not exist in the current provision. The bill would also allow the person to transport the firearm and ammunition *outside* of any vehicle if it is unloaded and in a

locked container or locked with a trigger lock or other locking device. Current law does not authorize transportation of the firearm or ammunition outside the vehicle.

- **Activity Incidental to Transport:** The bill would specify that these provisions apply while the person is staying in temporary lodging overnight, stopping for food, fuel, vehicle maintenance, an emergency, medical treatment, and any other activity incidental to the transport.
- **Immunity from Arrest and Detention:** The bill would limit the authority of law enforcement officers to arrest or detain individuals under suspicion of violating other gun laws, unless the officers also have probable cause that the firearms are not being transported correctly. Hence, officers would often not be allowed to stop and question people suspected of trafficking firearms across state lines.
- **Shifted Burden of Proof:** The bill would shift the burden of proof, whenever the defense in a criminal proceeding cites this law as a defense, so that the prosecution has to prove beyond a reasonable doubt that the person was transporting the firearm or ammunition improperly. If the prosecution fails to meet this burden, the government must pay the defendant's attorney's fees.
- **Right to Sue:** The bill would allow a person deprived of the right to transport firearms and ammunition under this new law to sue any person, including a law enforcement officer, state, or local government, who caused the deprivation. This language is similar to the language in H.R. 38, the Concealed Carry Reciprocity Act, in that it would impose on law enforcement officers a serious threat of personal liability if they mistakenly question a person's legal eligibility and purpose for possessing a firearm.

This bill provides no limit to the number of firearms or amount of ammunition that can be transported in the manner specified above. *These provisions would make it difficult for state and local police to enforce laws against illegal gun trafficking.*

WEAKENING REGULATION OF ARMOR-PIERCING AMMUNITION

Title XVIII, entitled the "Lawful Purpose and Self Defense Act", would dramatically weaken firearms regulation through several miscellaneous provisions**.** In particular, this Title would weaken federal regulation of armor-piercing ammunition, the importation of firearms and ammunition, destructive devices, and interstate transfers of firearms. More specifically:

- **Armor-Piercing Ammunition:** Federal law generally prohibits the manufacture, importation, sale or delivery of armor-piercing ammunition that may be used in a handgun, even if the manufacturer or importer primarily intended it to be used in a rifle or shotgun. The federal law exempts ammunition that the Attorney General finds is primarily intended for sporting purposes. The bill would replace these objective criteria with subjective criteria and remove the AG's authority in this area. Armor-piercing ammunition would then be legal if the manufacturer or importer claims to have intended it to be used for sporting purposes or in a rifle or shotgun. (Section 1802)
- **Importation of Firearms and Ammunition:** The bill would eliminate the "sporting use" test, dramatically increasing the types of firearms and ammunition that may be imported from other countries, and make other changes to weaken restrictions on the importation of firearms and ammunition. (Section 1803) More specifically, the bill would:

  - Require the AG to authorize the importation of any non-NFA firearm and any non-armor-piercing ammunition. Current law prohibits the importation of firearms or ammunition unless the AG has found that the firearms or ammunition are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the "sporting purposes test"), or in a number of other narrow circumstances. Firearms with certain military features as well as well as certain foreign-made cheap and concealable handguns are generally not considered suitable for sporting purposes. Consequently, these weapons cannot generally be imported under the current law. By eliminating the sporting use test, the bill would dramatically alter this situation.
  - Loosen the law regarding the importation of firearms and ammunition in other, less significant ways consistent with these changes.
- **Destructive Devices:** The term "destructive devices" is used to refer to certain highly dangerous weapons, such as Street Sweepers, that are subject to the National Firearms Act's tax and registration requirements, as silencers are. It includes firearms with a bore of more than one-half inch in diameter, but exempts rifles, shotguns and shotgun shells if they meet a sporting use test. The bill would broaden this exemption to apply to any shotguns and shotgun sells "suitable for [any] lawful purposes" (not just sporting use) and rifles that the owner intends to use for any lawful purposes. (Section 1804)
- **Interstate Transfers of Firearms:** This bill would enable loans and rentals of firearms between people who do not reside in the state for non-sporting purposes. (Section 1805.) While seemingly innocuous, these provisions might make it more difficult to prosecute gun traffickers, who might claim that they were "just borrowing" a gun or guns for self-defense while away from home.

The bill would also limit regulation of ammunition based on lead, provide funding for the construction of public shooting ranges, and allow firearms on certain kinds of federal land.